Building a Compliance Program From the Ground Up

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Some Assumptions:

• You’ve made the purchase decision (the inspections are over), or
• You’ve inherited – and now you’re trying to determine what to do:

BOTTOM LINE: YOU ARE COMMITTED
How did I get here . . . ??

[Image of a house and a landscape]
Decisions, Decisions
What Do You Need to Build?

• Investment or dream house?
• Family home or showplace?
• What’s the neighborhood like?
• Downtown, suburbs or Downton Abbey?
• What is the budget?
• Why build or remodel now?
• What do your stakeholders want?
• What do you stakeholders need?
• What is the budget?
• How will you demonstrate ROI?
The Design Phase Begins

- The architect
- The kitchen planner
- The structural engineer
- The cabinet builders
- The contractors
- The subs

- The Sentencing Guidelines
- The OIG guidance
- Thompson/McNulty/Filip Memorandum
- Corporate Integrity Agreements
Syncing with Elements

• If you are building from the ground-up or doing a renovation, you may want to keep an eye on the Affordable Care Act’s “8 core elements.”
  – Note: 2014 likely will bring regulations that flesh out the specifics of the 8 core elements but that’s no reason to wait

• Let’s think through the 8 core elements and what they mean for a new compliance program
• A whirlwind assessment of your needs....
ACA “Core Elements” of a Compliance Program

Laying a foundation

1. **Policies & Procedures**: “The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal, civil, and administrative violations.”
ACA “Core Elements” of a Compliance Program

Congratulations! You’ve just become the general contractor.

2. **Compliance Officer**: “Specific individuals within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures and have sufficient resources and authority to assure such compliance.”
ACA “Core Elements” of a Compliance Program

Be careful hiring the subs!

3. **Due Care in Discretionary Authority**: “The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in criminal, civil, and administrative violations under the law.”
ACA “Core Elements” of a Compliance Program

4. **Education, Training & Communication:** “The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, such as by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.”
ACA “Core Elements” of a Compliance Program

5. Auditing & Monitoring Plan: “The organization must have taken reasonable steps to achieve compliance with its standards, such as by utilizing monitoring and auditing systems reasonably designed to detect criminal, civil, and administrative violations under this Act by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report violations by others within the organization without fear of retribution.”
6. **Disciplinary Actions for Noncompliance**: “The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense.”
ACA “Core Elements” of a Compliance Program

7. Respond Appropriately to Compliance Issues: “After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses, including repayment of any funds to which it was not entitled and any necessary modification to its program to prevent and detect criminal, civil, and administrative violations.”
ACA “Core Elements” of a Compliance Program

8. **Periodic Assessments**: “The organization must periodically undertake reassessment of its compliance program to identify changes necessary to reflect changes within the organization and its facilities.”
What does your organization want and need?

- Current investigations? Risk of scrutiny for your program?
- Regulatory program requirements? What will happen under ACA?
  - How large is the organization? (See FSG → larger organizations need more formality)
  - What is your budget? (What does your budget need to be?)
Putting Together a Strategic Plan

- Structure – building the foundation and walls (OIG Guidances, FSG, ACA requirements)
  - Leadership
    - Compliance Officer, Compliance Committee, Board Reporting
  - Policies & Procedures
  - Training (General & Specific)
  - Auditing & Monitoring
  - Investigation & Response
  - Discipline & Incentives
  - Risk Assessment
  - Program Evaluation
Putting Together a Strategic Plan

• Substance – selecting the finishes
  – Risk Assessment – what are your organization’s highest risk areas?
    • OIG Workplans
    • Recent Settlements
    • High risk legal/regulatory requirements
  – Measuring and prioritizing risks
    • $$, reputational risk, probability, strength of existing controls
You’ve Drawn up the Plans – What Now?

• Historic Preservation
  – Is there anything here worth saving?
    • (Property Brothers vs. House Crashers)
• Pulling the Building Permits
  – How to you get buy in for what needs to happen?
    • Benchmarking
    • Information about the risks of not building well
    • Be/become the credible expert
Other Critical Points

• Know when to bring in the subs
  (Plumbing, electrical, cabinet builders)
  – At what point should you consider bringing in counsel? (legal advice, privilege)
  – Consultants
  – Make or build (training, hotline, investigation tracking systems, etc.)
• QUESTIONS?